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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JEROME TALLEY,)

10 Petitioner,)

11 v.)

12 KATHY VAN OLST,)

13 Respondent.)
_____)

CASE NO. C08-1758-MJP-JPD

REPORT & RECOMMENDATION

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15 Petitioner Jerome Talley is a pretrial detainee who is currently in custody in the King
16 County Jail. (Proposed petition at 1). He has filed an application for leave to proceed *in forma*
17 *pauperis* along with a proposed petition for a writ of habeas corpus pursuant to 28 U.S.C. §
18 2241. Although the basis of the petition is unclear, it appears that petitioner contends that his
19 due process rights have been violated because he has not been afforded a hearing to determine
20 whether he should be released on bail. (*Id.* at 3).

21 Although petitioner may challenge his pre-sentence detention by way of a petition for a
22 writ of habeas corpus, principles of comity and federalism require that this Court abstain and not
23 entertain any such habeas challenge unless petitioner shows that: (1) he has exhausted available
24 state judicial remedies, and (2) “special circumstances” warrant federal intervention. *Carden v.*
25 *Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980). Only in cases of proven harassment or
26 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid

1 conviction, and perhaps in other special circumstances where irreparable injury can be shown, is
2 federal injunctive relief against pending state prosecutions appropriate. *Id.* at 84 (citing *Perez v.*
3 *Ledesma*, 401 U.S. 82, 85 (1971)). Petitioner makes no such showing of “special circumstances”
4 warranting federal intervention. Accordingly, the Court recommends that the petition be
5 dismissed without prejudice to refile after state criminal proceedings, including appeal, are
6 completed. In addition, petitioner’s application to proceed *in forma pauperis* may be denied as
7 moot. A proposed order reflecting this recommendation is attached.

8 DATED this 8th day of January, 2009.

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11 JAMES P. DONOHUE
United States Magistrate Judge
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